

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 5

4 -----
5 SHEBOYGAN RIVER AND HARBOR
6 SUPERFUND SITE CONSENT DECREE
7 -----

8 United States EPA Public Meeting
9 Monday, August 4th, 2003

10 7:00 p.m.

11 at

12 Mead Public Library
13 710 8th Street
14 Rocca Meeting Room
15 Sheboygan, Wisconsin

16 Reported by Margaret A. Matousek, RPR
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A P P E A R A N C E S:

United States Environmental Protection Agency
Region 5, by
Ms. Susan Pastor, Community Involvement Coordinator
Mr. Richard Nagle, Assistant Regional Counsel
77 West Jackson Boulevard
Chicago, IL 60604-3590

PUBLIC COMMENT

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1 TRANSCRIPT OF PROCEEDINGS

2 MS. PASTOR: I'd like to get started. It's
3 7:00 o'clock. That went well. Thanks for coming.
4 I'm Sue Pastor. I work with the US EPA. I'm a
5 community involvement coordinator working for the
6 Sheboygan River and other Superfund projects since
7 1987. My co-worker, Rick Nagle, he's the attorney
8 that has been working on this project for slightly
9 less time than that, but 1988, 1989. So we --

10 MR. NAGLE: Forgotten. It's so long.

11 MS. PASTOR: Tonight we are here to talk
12 about the consent decree lodged in federal court back
13 end of April/beginning of May. This is what this
14 meeting is about tonight. There was a request to
15 have one pertaining to that particular legal
16 document, and that's why we are here, to -- we'll
17 take questions according to the agenda. We will have
18 a little brief explanation about the consent decree.
19 Rick will go through that and we'll be happy to take
20 your questions pertaining to this particular legal
21 document.

22 And then we have a court reporter over
23 here that will be happy to take any statements, your
24 comments, your opinions and thoughts on the consent
25 decree. I have asked her to get your names and your

1 organizations that you're affiliated with. And I ask
2 you to spell your name for the court reporter if it's
3 kind of a difficult name or you're giving an
4 organization you need to spell the name for her so we
5 get it right for the record.

6 So I think I will just get started.
7 I'll have Rick start right away. We need to be out
8 of this room by 9:00 o'clock, so I think at quarter
9 to 9 they flick the lights on us. And it's a nice
10 place and nice facility so we don't like to overstay
11 our welcome. So we will get going quickly. Rick.

12 MR. NAGLE: Sure, I'll be happy to. Number
13 one question I've heard in the lobby is where is John
14 O'Grady and Tom Short, who was the project manager
15 for quite some time through the ROD. He, for better
16 or worse, was promoted. And John O'Grady, the new
17 project manager, is in Ireland.

18 We have a lot to cover tonight. We
19 are talking about the consent decree. We are going
20 to start talking about goals afterwards, about what's
21 going on with the project. I'll touch a little on
22 that getting up to date and where we are today. But
23 for the most part I'm going to stick to what's in the
24 agreement and kind of the basics of the agreement.
25 And then if people have questions about what's in

1 this agreement, about what's -- how is it structured,
2 I'll be happy to take those questions.

3 And then as Sue described, there's a
4 period at the end for people that would like to make
5 statements for the record about the consent decree.
6 With that, I'll get going on the consent agreement
7 itself.

8 You all know what we are here for.
9 You're probably asking yourself what's been going on
10 since May of 2000 since we came out all these many
11 years ago and had the record of decision signed and
12 the public meeting about the record of decision.
13 It's a nice crowded room here where we talked about
14 that. And I thought it would be good to start with
15 what have we been doing since then. Certainly not
16 sitting around kind of waiting for the next
17 opportunity to come out here and tell you we haven't
18 been doing anything.

19 We signed that, got that ROD and that
20 decision made in May of 2000. Shortly after that we
21 started in with discussions with Tecumseh, the PRP,
22 and then expanded that to include a couple of other
23 PRPs to begin the negotiations over who is going to
24 do the work and who wants to sign up and pay the
25 money. Always entertaining discussions to have with

1 a group of companies.

2 We were presented with an idea that we
3 might cash out, and that's the first -- the second
4 bullet point. And what that means is people came
5 forward and said look, the standard Superfund model
6 is we do the work. You get this agreement, we do the
7 work and pay for it. I'm going to skip that and give
8 the money and you do the work.

9 So we started to have that
10 conversation, how much money would it take, what they
11 would get in return, who -- what was the nature of
12 the beast. And those discussions actually went on
13 for over six months back and forth about what might
14 be involved. Because at that point if you want to
15 cash out with all the governmental entities you're
16 also bringing in the state, the federal trustees and
17 a whole host of other parties.

18 And we actually took quite some time
19 to get all of the parties together, work collectively
20 to kind of come up with a what would it take? How
21 much money would it take to get rid of the government
22 this case? And it was too much ultimately. We
23 wanted way too much money.

24 And so after about six or eight months
25 of discussions with the collective PRP group, those

1 negotiations terminated and broke down. And then we
2 kind of took a step back and said okay, we now want
3 to kind of get going on this. What's the next step?
4 So then in about March of 2001 we made kind of an
5 internal management decision to break the site into
6 two: The upper river chunk, which is three pieces.
7 The five-piece ROD, the record of decision, broke the
8 clean-up into five bits.

9 This particular bit that we're talking
10 about tonight and that we decided to pursue in 2001,
11 starting in 2001, is the source control portion of
12 the ROD which is at the plant decree -- with the
13 plant site. It's the floodplain soils adjacent to
14 the upper river and then a section of river from the
15 Tecumseh plant down to the first dam.

16 So just -- and this is a common thing
17 to do, break clean-ups into pieces. We broke it into
18 pieces. And there's a couple different reasons to do
19 that, involving what would be a good chunk of work to
20 do all at one time, what would be a substantial chunk
21 to leave so when we negotiate the second half we can
22 bring the state and trustees back into the mix and
23 negotiate over that portion of it all together again.
24 So there's a bunch of things that went into the
25 decision to break it up.

1 We broke it up into two sections. And
2 that was around March of 2001. Negotiations for a
3 complex RDRA take about a year --

4 MS. PASTOR: Explain what that is.

5 MR. NAGLE: -- to do this kind of
6 document -- thank you, Sue. To do this document and
7 get a company to sign up to do the work, to do the
8 design work and then foot the implementation of a
9 clean-up bill, it'll take a year from the time you
10 send them the model document, the model legal
11 document, fill in the blanks -- one that comes off
12 our web site -- to actually get through the
13 provisions, negotiate the different provisions,
14 generally a year plus or minus.

15 This being a more complex site, it
16 went a little more than that, compounded by the fact
17 we had a modest disagreement about how much the past
18 costs were in terms of our oversight. And so things
19 broke down for a couple months while we haggled over
20 how many millions they were going to pay the United
21 States in past oversight costs for 14 years' worth of
22 keeping an eye on things.

23 So that literally took us, from
24 March 2001, a year and a couple months of standard
25 negotiations plus this little breakdown, to just

1 after the first of the year and just after the first
2 of the year we had an agreement in principle. We
3 finished up the document and everyone gets to
4 share -- their supervisors look at and sign it, take
5 a deep breath. By April 15th of this year we had all
6 the signatures on it and it was finished, finished to
7 the point where we have signatures on a document.

8 The document then has to be entered or
9 lodged with the court. And what that means is that
10 we say we have an agreement. The federal court has
11 to bless it. We take it in with a motion and say
12 this is our agreement we are now going to have a
13 public comment period, which is -- this is a function
14 of. And after that public comment period we will
15 have a motion to enter where the court will sign off
16 on it and say this is it, go forward. So --

17 MS. PASTOR: Mention the Department of
18 Justice.

19 MR. NAGLE: Department of Justice. What do
20 they have to do with any of this? The Department of
21 Justice represents the United States, the attorneys
22 for the United States. I'm an attorney for the
23 United States but I only represent the parochial
24 interests of the EPA. When we go to federal court,
25 the Department of Justice is involved. And who my

1 co-negotiator for all of this is is a woman named
2 Leslie Lehnert out of the Washington, D.C. office,
3 Department of Justice. And actually the Department
4 of Justice takes on much of the legal tasks of doing
5 the court work, through the U.S. Attorney's Office in
6 Milwaukee, and sets up the public comment period,
7 does a lot of those kinds of things. So that
8 actually the public comment period and Federal
9 Register notice were all run by the Department of
10 Justice; it wasn't an EPA task per se.

11 But that pretty much brings us to
12 date. We are literally after the public comment
13 period. The public comment period ran 30 days from
14 somewhere around the 15th. We received a request for
15 an extension, which was only granted two -- for
16 another two weeks. But in fact by being here tonight
17 and having public comments available that we'll end
18 up responding to as part of the public record that's
19 submitted to the court today counts as well.

20 So anything you bring up today in
21 terms of comments will be recorded by the court
22 reporter and becomes part of the official record of
23 public comments on the consent decree.

24 What I will do, what Leslie will do
25 when we get all of these is we end up having to put

1 together a response to comments, so that we have I
2 think three separate letters from folks as written
3 comments during the public comment period.

4 Now, we will have whatever comments we
5 get tonight. And what we do is chronicle those,
6 group them if similar, and then we will respond to
7 them as part of our charge to the court.

8 The court says, have the public
9 comment period, tell me what you hear, and we will do
10 that. So that's the next step after this in terms of
11 just the procedure and the steps that go on with the
12 document, the legal steps with the document itself.

13 What's been going on in terms of work,
14 you might ask? While negotiations were going on not
15 a whole lot of actual work was being done but there
16 was some work being done to keep the ball rolling.
17 One of the things that, as we started having
18 discussions and time kept dragging on, one of the
19 things we discussed with Tecumseh in their contract
20 was let's try and keep certain things going so we
21 don't lose too much time on the schedule.

22 Certain things, in fact mostly paper
23 exercises, had been going on. And in fact the
24 document, the legal document itself, the consent
25 decree, calls for activities officially to begin when

1 it's signed and lodged with the court so that we
2 actually have the first set of deliverables being
3 generated under this agreement right now. That will
4 stop if the agreement isn't lodged at a certain
5 point.

6 If the court says no, we are -- you
7 can't do this, then that work will stop until we fix
8 the problem. So the obligation for the company, for
9 Tecumseh, is not to keep going even though the
10 ultimate agreement isn't finalized but it is to go
11 now for a reasonable period, doing certain tasks even
12 though it's not been officially blessed by the court.

13 We have the mutual understanding that
14 this -- we really should be able to get this done and
15 lodged. And then we didn't want to lose this whole
16 period, this whole 90, 120 days, messing around with
17 the legal system and have no work go on, so we built
18 this in on purpose.

19 I already talked a little bit about
20 what does it cover. What does this agreement cover?
21 This agreement covers what we have defined in the
22 agreement as upper river work. And as I described in
23 the beginning, upper river work is -- are the three
24 pieces of the record of decision, the three pieces of
25 the clean-up plan that were approved in May of 2000

1 that include the plant facility itself, the
2 floodplain soils in specific areas along the upper
3 river, and the sediment deposits in the upper river
4 itself between the plant and the first dam.

5 So that's what's included in terms of
6 the work and the obligation that work be done in
7 accordance with the ROD, the clean-up plan approved
8 to deal with those three pieces.

9 It also covers our agency's past costs
10 and then also includes an obligation to fund the
11 agency's future oversight costs, which are
12 essentially John O'Grady's time, my time, Sue's time
13 and probably half a dozen other people at the agency
14 that are involved in looking over and overseeing the
15 process from here on out. Actually a bill to recoup
16 that money and put it back in the fund.

17 AUDIENCE MEMBER: If we have questions can
18 we ask them now or wait until later?

19 MS. PASTOR: Could you wait until later?
20 He's on a roll.

21 MR. NAGLE: Until my voice gives out, and
22 then we will see what happens. Obviously the United
23 States and the public gets something out of this.
24 What does the company get in return? This is
25 relatively standard for all of our agreements. Just

1 as a footnote, we have a standard form agreement for
2 this kind of a situation. It's actually published in
3 The Federal Register. I think you can get it on our
4 web site. Kind of a fill-in-the-blanks agreement
5 called the model RDRA agreement. R D is remedial
6 decision, R A is remedial action. And there's
7 actually a copy of it on our web site and published
8 in The Federal Register.

9 And basically that's what I work off
10 of. I take this; it's a standard form. And then we
11 customize it for each individual site. This first
12 provision is just a standard provision. Since this
13 is a partial clean-up, it's not the whole clean-up,
14 the U.S. won't sue Tecumseh for work done on the
15 upper river. If somebody does the whole job, they
16 get a much broader release. We won't sue them for a
17 whole bunch of other things as well. But in this
18 situation as a partial clean-up they only get a
19 partial legal release. And we just promise not to
20 sue them for the work that they were supposed to do.

21 There's what we consider to be kind of
22 a minor or modest deviation from the model in No. 2.
23 The U.S. won't sue Tecumseh under other laws for the
24 work that's done. What does that mean? That means
25 if we could have made them do this work under RCRA or

1 TOSCA, Resource Conservation Recovery Act, and that
2 usually governs operating plants and problems at
3 operating plants. And we have, as an agency,
4 successfully used RCRA to force companies to clean up
5 sediments. Well, Tecumseh doesn't want us coming
6 back and suing them under that law to do the same
7 thing, so they ask for that release.

8 The Toxic Substances Control Act, or
9 TOSCA, is the same kind of law but directed at
10 specific chemicals, and PCBs are one of those
11 chemicals. The agency has made companies clean up
12 PCB contaminated sediments under TOSCA. So Tecumseh
13 asked for a release under TOSCA for the work we are
14 making them do under CERCLA, the Superfund, so we
15 don't come back years from now and say do that again
16 under a different law. It's kind of a once we get
17 them, we get them once, and we can't come back time
18 after time.

19 So we give them the same kind of --
20 the same kind of protection but under the other laws.
21 And that's a deviation from the model. It's a change
22 from the model, but it's also something that we have
23 done in other sediment agreements because we have
24 used these other laws to compel that kind of
25 clean-up.

1 One of the things that companies
2 really, really like to get is contribution
3 protection. That means they are protected from other
4 companies suing them for the contamination. Once
5 they have done the work, nobody else can say, hey,
6 you have to do more of this.

7 AUDIENCE MEMBER: Just other companies?

8 MR. NAGLE: Right, just other companies.
9 And of course then since they paid us for the past
10 costs, they want us to say that yes, you're done with
11 past costs; we couldn't come back and ask for more
12 past costs.

13 There's one other -- and I think I'll
14 mention it here -- a provision that's I think a
15 deviation from the model, something that we actually
16 have gotten some comments on from people. And
17 there's a provision in the consent decree that allows
18 Tecumseh, allows the people doing the work, to come
19 forward with information to the agency after they
20 have begun work and ask us to review the clean-up
21 standards that we set. And that's something that
22 they are allowed to do under the NCP, under the
23 regulations, and under our guidance. But we actually
24 put it in writing in the consent decree. I think
25 that's probably the first time in the nation that we

1 have actually had a provision like this in a consent
2 decree. So that is another I think notable deviation
3 from the or change from the model is that we actually
4 kind of built that into the consent decree.

5 And like most agreements, you have to
6 have a set of provisions what happens if, kind of; we
7 call them the reopeners. It's all the contingency
8 planning if something else happens.

9 You know, what happens if Tecumseh
10 fails to comply with the consent decree. Built in --
11 and this is all standard stuff. There's nothing --
12 these are the standard provisions. There weren't any
13 peculiar reopeners.

14 If they fail to comply with the
15 consent decree, we have stipulated penalties. Which
16 means that certain kinds of problems, we can -- they
17 agree to pay us money if we tell them they are
18 messing up. It's like speeding tickets or fines that
19 everyone agrees to in advance. If you miss a
20 deadline, a certain amount of money. And it's
21 actually in the consent decree, major milestones, a
22 thousand dollars a day incentive program to stay on
23 track. If there's massive failure there are
24 provisions for work takeover by EPA.

25 What if there's an emergency, flat-out

1 emergency? EPA retains its authority to do emergency
2 response which is, you know, if something big and bad
3 happens we can shift gears into an emergency mode.

4 Future disposal by Tecumseh. Of
5 course this kind of decree not covering, not being
6 the whole amount of work, it just covering the small
7 portion of work doesn't give the broad release or you
8 never have to talk to us again release. But we
9 specifically reserve the right to come after Tecumseh
10 for future problems that were undiscovered.

11 So if there's a future release, a
12 future dumping, a future problem either at the site
13 or off-site, we have the ability to deal with it.

14 This agreement does not deal with
15 criminal or deliberate actions. If we determine that
16 there was an environmental crime committed, this does
17 not absolve anyone of that kind of behavior.

18 Weather-related problems. Those come
19 under the act of God or force majeure clause. And
20 that, you know, weather happens. Those of you who
21 were in the rainstorm on Sunday know that that kind
22 of thing can slow down any construction project and
23 slow down driving through Milwaukee.

24 We have a provision in there that
25 allows the company to come to us and say, it's still

1 frozen on March 31st, we can't start work. The EPA
2 will look at that and decide whether or not that's an
3 act of God or reason for delaying the schedule.

4 There are certain definitions that
5 just being late or over budget and other kind of
6 routine things do not count as acts of God or big
7 reasons to have a delay.

8 What if Tecumseh runs out of money?
9 There's a provision in -- and again standard
10 provision within the agreement -- that provides for
11 financial assurance. One of the benefits of having a
12 formal agreement is that we contemplate that
13 companies have problems and try to get a certain
14 amount of financial assurance up front.

15 There are certain mechanisms for a
16 company to demonstrate that, ranging from bonds to
17 corporate letters of credit, a whole string of them
18 that are allowable under a decree. Since we are not
19 in the official decree period, we are not exactly
20 sure which one Tecumseh will offer up. I have a
21 guess, but I'll reserve that until I see it.

22 And finally, there's the what happens
23 if the parties can't agree about how something is
24 supposed to work. We have a dispute resolution
25 mechanism where if the parties can't agree on

1 something, mostly the burden is on the company to
2 come forward and say we don't agree with your
3 decision, EPA, and how this is supposed to work.

4 They invoke this dispute resolution
5 mechanism. And then say to us, here is why we think
6 you're wrong. And then there's a certain number of
7 days we respond to them, there's a cooling-off period
8 where we have to talk and try to resolve it. If that
9 doesn't work, then it goes up into the EPA management
10 chain for official resolution, with EPA retaining the
11 ultimate authority to make that decision.

12 There's other mundane things in there
13 like where do you send the check, who gets notice.
14 There are some provisions for including the state in
15 the decision-making process. You probably notice
16 that the decree is only signed by Tecumseh and EPA
17 and not the state. That happens from time to time.

18 I think we have tried to work very
19 closely with the state on this site and allow them to
20 review the documents as we were developing them, took
21 their comments and built specific provisions into
22 this agreement where the state has review and comment
23 built right in. I think functionally speaking we
24 hope it works out even closer than that. But the
25 minimum requirements are laid out in the document. I

1 think I'll leave it at that. Certainly if there's
2 questions --

3 MS. PASTOR: We will take this --

4 MR. NAGLE: Take them right now.

5 MS. PASTOR: If you have a question about
6 this particular document, that's what Rick was
7 talking about -- those were the Cliff notes up
8 there -- did you get all that? That's what we are
9 here for, so mainly to talk about the consent decree,
10 this legal document that was filed with federal court
11 in the springtime.

12 And now is your chance to ask
13 questions. And later on, as I said, there will be a
14 comment portion where you'll be able to give your
15 opinion on it. And that's when the court reporter
16 will be particularly interested in your name and how
17 it's spelled. And if you're with a particular
18 organization, she would like to know that, too.

19 I did want to say I had about 20
20 copies of these, and they are gone. But if you need
21 a copy, I could send you one. But you could find it
22 on the internet faster. And we had a mailing that
23 went out in April or May and it listed that web site
24 in there. And I've been sitting here trying to
25 remember off the top of my head. And it's Federal

1 Register with some vowels missing, but that's the
2 part I might tell you wrong. Someone is looking.
3 You have that?

4 AUDIENCE MEMBER: The web site?

5 AUDIENCE MEMBER: In the blue sheet.

6 MS. PASTOR: That's not ours.

7 AUDIENCE MEMBER: Are you talking the
8 actual document or is it on your -- you click it on
9 your site?

10 MS. PASTOR: That's on our web site. It's
11 in so many places.

12 AUDIENCE MEMBER: The web site Region 5 --

13 MS. PASTOR: The home page for sure. W-W-W
14 dot E-P-A dot GOV, G-O-V, slash Region 5. That's
15 Region number 5 all together, slash sites, S-I-T-E-S.
16 That one I do know. I'm --

17 MR. NAGLE: The other way is to write me an
18 email electronically. Adobe Reader, I can send it to
19 you. And I'm pretty easy to find. I'm here tonight.
20 If you don't need it until tomorrow or can wait until
21 I am at my computer to respond, email is Nagle,
22 N-A-G-L-E, dot Richard -- it's on there -- at E-P-A
23 dot GOV. It's on the agenda. If you want to send me
24 a quick email I have them electronically in Adobe.
25 If you have Acrobat or Reader, they will send very

1 nicely and have that.

2 MS. PASTOR: And pick it off the web site.
3 Either way, so -- sorry about that, I ran out of
4 copies, but they are heavy so I only made 20 of this
5 legal document. What questions do you have for us?

6 AUDIENCE MEMBER: How much -- I got a
7 question. How much more is being taken out of
8 Tecumseh property than what was before? In other
9 words, what depth are you going to now to clean up
10 the end of it?

11 MR. NAGLE: Well, the -- that's probably
12 technically a technical question for John. But I
13 think that's subject to the requirements of the
14 clean-up plan and we are just in the planning phases
15 right now.

16 Part of the clean-up plan was to
17 investigate the Tecumseh plant a little more fully.
18 Fundamentally we want to stop the PCBs from getting
19 to the river. Our default, barring any -- a better
20 idea, was to cut it off, just cut the flow of
21 groundwater off to the river.

22 But in conjunction with that, there
23 might be some other things that happen including
24 digging up some source areas. And we are waiting for
25 the plans to come back in to see exactly how that

1 plays out.

2 AUDIENCE MEMBER: I guess in general when
3 you're talking about a certain amount of feet being
4 taken out, is there more being taken out from that
5 area or is it -- is this a confined process that we
6 are going through again? Wasn't it all taken out
7 first of all?

8 MR. NAGLE: At the plant?

9 AUDIENCE MEMBER: Right, at the river in
10 the plant.

11 MR. NAGLE: This was one spot area, one --
12 for those of you not familiar with the river, that's
13 as familiar as Larry is with it, there's a spot next
14 to the plant known as Area 1 that despite doing quite
15 a bit of digging next to it still had some high hits
16 of PCBs. And that will be dealt with separately.
17 That's its own thing. We consider that to be part of
18 the source control more than a sediment clean-up
19 because the contamination goes into the -- down into
20 the bank so far.

21 AUDIENCE MEMBER: So in other words, this
22 is completely separate. It could be you have to go
23 down 8 feet, 10 feet or more but is this going to be
24 a general control for the whole river or just a start
25 for that area? In other words, what I'm saying is

1 how many feet are you going to go down the rest of
2 the river in comparison to up there? Is it going to
3 be the same?

4 MR. NAGLE: That particular area is a very
5 unique source area so near the plant it's hard to say
6 if other areas near the plant are going to need that
7 kind of excavation and I don't know. I think, again,
8 that's probably a better question for John and the
9 technical folks once they are further down in the
10 process.

11 But in terms of the river itself and
12 most of those sediment deposits as part of the
13 process are reevaluated, we define them again, do
14 probing to make sure how deep they are in area extent
15 and remapped.

16 In terms of the floodplain soils in
17 those I think six specific areas, that's all
18 essentially resurveyed to make sure you've got the
19 right area and then some consultation with some of
20 the biologists who say we want to get everything over
21 10 parts per million out of this area. But we don't
22 want to hack down trees and ruining what we call high
23 quality habitat.

24 So really, this is part of the record
25 of decision, but that -- those -- there will be some

1 in-field decisions along those lines.

2 MS. PASTOR: Someone else have a question?
3 Keeping in mind Rick is an attorney and he's
4 really -- legal questions related to this document,
5 please.

6 AUDIENCE MEMBER: Does this decree outline
7 how much time they have to clean it up? Does it give
8 a timetable on how long they have to do this?

9 MR. NAGLE: We have, as part of the scope
10 of work, as part of the work plan that will come in,
11 we will get from them a schedule that will --
12 basically it ratchets off the date of lodging, which
13 has already happened, and when we first approach the
14 court and say here is our agreement. And then
15 there's this public comment and everything else
16 happens.

17 But from that day forward we have a
18 schedule that's ratcheted off of 90 days after that
19 date something is due and 90 days after that
20 something is due. So we have or will have when we
21 get the work plan a full schedule that will lay out
22 what's going to be done when and where.

23 AUDIENCE MEMBER: Barring any --

24 MR. NAGLE: Barring weather problems.

25 AUDIENCE MEMBER: -- unforeseen --

1 MR. NAGLE: Unforeseen things.

2 Disagreements about how something needs to work,
3 difficulties in. But we try to build contingencies
4 in so that there are a couple of extra days in case
5 something happens. Because something always happens.

6 AUDIENCE MEMBER: Is there a ballpark on
7 how long you estimate something like this to take?

8 MR. NAGLE: It's easy on the technical
9 side. I can give you a guess, but it's probably -- I
10 don't want to guess. And we can get an answer to you
11 from John. If I were guessing, I think we have kind
12 of ballparked four years --

13 AUDIENCE MEMBER: That's fine.

14 THE WITNESS: -- or until Susan retires.

15 MS. PASTOR: I wish I was four years.

16 MR. NAGLE: But then one of the other
17 things that happens, this work goes on. And what we
18 hope will happen is as soon as this work is up and
19 running and everyone's comfortable that we have got a
20 good process going, then we need to start the next
21 phase of negotiations over the middle river and lower
22 and harbor pieces and do the exact same thing, get a
23 consent decree, an agreement in place to govern that
24 work.

25 AUDIENCE MEMBER: If it's going to take

1 four years to complete, what about the commerce on
2 that upper river? What about the businesses it
3 interrupts?

4 MR. NAGLE: Well, four years to complete,
5 we think that each section of the river we will --
6 only a portion of it will be active in a year. So if
7 the ASRI -- we did some work out there in '90
8 and '91. I don't think that the river itself was cut
9 off completely at any time, so I don't think we are
10 looking at having any major impacts over the course
11 of the whole four years.

12 There might be some localized impacts.
13 And certainly as we discuss access through the Kohler
14 horse farm and the Kohler mansion property and
15 through certain other sections of that river, we have
16 to be -- we will be conscious of how that impacts
17 those businesses.

18 AUDIENCE MEMBER: Who takes care of that?

19 MR. NAGLE: That's left to negotiations
20 between the company and local businesses what the
21 impact is and if they need to relocate something or
22 access through the property.

23 AUDIENCE MEMBER: This may not be real
24 legal for you. But I read in one of the papers I
25 think it was 5,000 cubic yards was dredged up and

1 they stored it some on site and were going to see if
2 some biodegradable -- and stuffed some in the river
3 covered up with fabric and all this other stuff to
4 keep it from leaching out. And then 30 -- I think
5 38 cubic yards was disposed of, was taken and
6 disposed of. Why wasn't the rest of it gotten rid of
7 and what happens when Tecumseh leaves? Are they
8 still going to take all their garbage with them?

9 MR. NAGLE: That work was part of packing
10 it up and taking it up to New Holstein.

11 AUDIENCE MEMBER: Wherever they are going.

12 MR. NAGLE: That was the result of the
13 removal work we did in '90 and '91. Those tanks, the
14 big swimming pool and things in their parking lot at
15 the Sheboygan Falls plant are gone and that stuff was
16 taken to a landfill last summer. The stuff that's in
17 the river now covered with the fabric, that stuff
18 was, some of those spots were dredged already and the
19 fabric and cobbles put over the top of it after they
20 were dug up.

21 Because some of the spots were kind of
22 hot and some of it was just experimentally covered as
23 part of that removal action. As part of the existing
24 work plan and part of the agreement, all of those
25 sites will be revisited as candidates for removal.

1 AUDIENCE MEMBER: Is the garbage taken
2 somewhere?

3 MR. NAGLE: Each of them will be looked at.
4 Some of them were already scraped and cobbles and
5 stuff put over it, and there will be probably a
6 decision about does it make sense to rip up the
7 carpeting and see what's there or just to leave it
8 the way it is. But that will be looked into.

9 AUDIENCE MEMBER: Who decides if that's
10 going to stay there or not? The EPA?

11 MR. NAGLE: Yeah, in conjunction with our
12 friends at the state who review and comment --

13 AUDIENCE MEMBER: In DNR?

14 MR. NAGLE: Yeah.

15 MS. PASTOR: Rick is doing a really good
16 job of answering questions that are not legal. So
17 anybody got anything that's really up his alley?

18 AUDIENCE MEMBER: My question isn't legal,
19 either; it is historical however. We had our
20 11 inches plus or minus of rain very close to this
21 date on August 6th, 1998. And I remember reading in
22 either the Sheboygan Press or the Milwaukee Journal
23 Sentinel that that tremendous volume of water that
24 was washing out of the Sheboygan River into the lake
25 had scattered the PCBs that were buried in the

1 sediment on the bottom of the river. And the comment
2 was made that they had -- were all over, whether the
3 water ended up in the city. And I just -- that's the
4 last I ever heard or had any mention of that at all.
5 And I just -- can you say something, just maybe a
6 little comment on that?

7 MR. NAGLE: Well, if -- we talked about
8 that with some of the local folks in terms of kind of
9 gauging how big that flow was. And it was a 35-year
10 event. 35-year storm event. We, as part of our
11 analysis for the record of decision, looked at the
12 scour pattern that that kind of event caused.

13 I don't think there -- I'm not sure
14 where the characterization came from PCBs were picked
15 up and spread all over the place. I don't think that
16 they were picked up and spread all over the place.
17 But you can't discount the fact that anytime there's
18 a flood or high flow event that stuff can move,
19 there's a potential for the stuff to move. Having
20 said that, the real challenge now is to, as part of
21 this plan, is to get out there and characterize where
22 it is right now and have the clean-up plan for the
23 upper river then be implemented as soon as possible
24 after that so you know where it picks it up and get
25 it out of the system.

1 The same will happen in the second
2 half, is we will have a recharacterization and that
3 will provide us with a lot of new information about
4 where -- how things are distributed, where the PCBs
5 are in the rest of the river and allow us to say, is
6 the plan we came up with in 2000 relevant and
7 functional for 2007?

8 Because the information we have
9 2000 -- 1999, 2000, will be rather dated, and so from
10 the first step will always be recharacterization,
11 follow-up.

12 AUDIENCE MEMBER: Is there anything in this
13 legal agreement -- I realize this is for the upper
14 river, which is before the first dam or up to it.
15 But I thought when reading some the documentation
16 from your site that there's some legal agreement that
17 eventually they are going to be doing some clean-up
18 for the rest of the river and the inner harbor. Is
19 that right or no?

20 MR. NAGLE: That's in the clean-up plan,
21 the record of decision that that plan will be
22 implemented.

23 AUDIENCE MEMBER: Is that involving
24 Tecumseh?

25 MR. NAGLE: We hope so, but we haven't got

1 there yet.

2 AUDIENCE MEMBER: No actual legal
3 agreement?

4 MR. NAGLE: No actual legal agreement at
5 this time. The plan is that we again get this upper
6 river process -- not done, just going. And that
7 maybe a year from now, because -- if this moves
8 forward and these move forward as we get going.

9 Right now next year at this time there
10 should be field work going on. At that point
11 everyone feels relatively secure that things are
12 moving, the system is up and running, and then we can
13 say okay, now that that's going, now let's talk about
14 the rest. And that will keep going on going.

15 And then we will take the time,
16 probably another year or so, to negotiate with not
17 only Tecumseh but probably the rest of the
18 potentially responsible parties that are involved
19 from downstream of the Kohler dam to the mouth of the
20 river and talk about who, how much, when and get all
21 of that.

22 AUDIENCE MEMBER: Approximately
23 50,000 cubic yards of sediment, I think I read.

24 MR. NAGLE: Yeah.

25 MS. PASTOR: She is good.

1 AUDIENCE MEMBER: I researched before I
2 came.

3 MR. NAGLE: So that would be about
4 50,000 cubic yards.

5 MS. PASTOR: Who else with a question
6 besides Larry?

7 AUDIENCE MEMBER: I wondered how deep into
8 the river bed the PCBs are wedged. I know they are
9 not water soluble. Are they just resting on the
10 bottom or how deep, far down are they?

11 MR. NAGLE: In the upper river, the bit we
12 are talking about, most of the sediment deposits rest
13 on top of rocks and cobbles that formed the bottom
14 surface. And so I think we are talking anywhere from
15 4 or 5 feet to a couple inches, depending on --

16 AUDIENCE MEMBER: So there's a pretty good
17 layer?

18 MR. NAGLE: In certain places there's a
19 pretty good layer. In some places kind of a thin
20 ribbon. And that's part of the challenge of
21 implementing the work is to go and find those and
22 delineate them.

23 AUDIENCE MEMBER: I had a thought, if I
24 could take a minute to elaborate. I did a lot of
25 looking at the EPA website in the past few years

1 about the PCBs in the river, and then I looked at the
2 zebra mussels and saw that the zebra mussels are
3 siphoning the water and they are ending up with the
4 PCBs in their body.

5 MR. NAGLE: I think so. But now you're way
6 out of my field.

7 AUDIENCE MEMBER: Stay with me a minute. I
8 understand right now there's enough zebra mussels and
9 quagga mussels in Lake Erie to completely siphon Lake
10 Erie. And one female can lay -- female mussel lays
11 30,000 eggs. And they attach themselves to rocks or
12 cans of soda or anything solid at the bottom of the
13 water, so a bottom feeder, and siphoning that water
14 through their system.

15 And I wonder if it wouldn't be a
16 reasonable thing to do some experiments with using
17 the zebra mussels in all of our waterways to siphon
18 that -- siphon -- stir up the sediments, have them
19 siphon through their bodies and pull them out.

20 There's a lot of water fowl being
21 poisoned and quagga mussels in the food chain. And
22 the zebra mussels are pulling toxins out of the
23 bottom.

24 And I wonder if there's any chance --
25 that seems to me to solve maybe two problems: the

1 zebra mussels, and make them work for us rather than
2 pulling off the river bottom.

3 MS. PASTOR: Could be.

4 MR. NAGLE: We will take that one back and
5 give it to someone.

6 AUDIENCE MEMBER: I thought this could work
7 with the right team.

8 MR. NAGLE: I think our friends at NOAA in
9 conjunction with the state trustees have looked at
10 some of the impacted species including some of the
11 mussels even here in Sheboygan to see what impact the
12 PCBs are having on the aquatic system. I don't know
13 if that's something that's been looked into in terms
14 of a separate remediation alternative.

15 AUDIENCE MEMBER: Make them work for us.

16 MR. NAGLE: Again, I'll be happy to pass it
17 on. We have opportunities in terms of the Superfund
18 site program where there's innovative technologies we
19 can bring to bear. We have done some interesting
20 work using plants in phyto-remediation. Maybe
21 somebody's got a thesis out there says this is a good
22 idea and we could fund it. We will have to take it
23 back. We are out of my ballpark.

24 MS. PASTOR: Anybody have a question in his
25 ballpark? If we could try to wrap up the Q and A in

1 the next 5 or 10 and then want to be sure there's
2 enough time for the people that are going to make
3 official public statements to be read into the
4 record, to give them enough time to make those
5 statements. And then if there's time afterward, I'm
6 perfectly happy to stay and talk.

7 AUDIENCE MEMBER: Does this legal document
8 cover the overflow from the work above river carrying
9 it downstream?

10 MR. NAGLE: Does it cover the overflow,
11 carries downstream.

12 AUDIENCE MEMBER: -- confusion. While the
13 work is being done there's PCBs actually transported
14 to the lower river because of the upper river work.

15 MR. NAGLE: Right.

16 AUDIENCE MEMBER: Does this document
17 protect Tecumseh from further lawsuits below that
18 dam?

19 MR. NAGLE: When I explain this only covers
20 work in the upper river, that's what it means. So
21 off-site migration -- that's, again, why we
22 structured the work to work from upstream to
23 downstream, so that if there are any problems working
24 downstream then the work downstream will hopefully
25 pick those up.

1 But this particular document only
2 covers them for work done, not for any residual
3 liabilities that come from that kind of transport.

4 AUDIENCE MEMBER: Thank you.

5 MS. PASTOR: Any other --

6 AUDIENCE MEMBER: What legal problems do
7 you fear or what kind of legal problems could come
8 up?

9 MR. NAGLE: I think "fear" and "come up"
10 are too different. I would say that based on my
11 experience with the site I think we will have a
12 creative challenge to make sure that we can have
13 access points to the river where we need to. I think
14 it's because of the kind of property that's along the
15 river, the Kohler horse farm, the mansion that's now
16 a luxury resort, that there are certain sensitivities
17 to you putting a construction site right through the
18 middle of those kinds of properties.

19 So I think we will have to work
20 closely with Kohler to get that done. My
21 experience -- maybe I'm jaded in having talked access
22 negotiations at other sites -- but going through
23 someone else's property to do a clean-up is always a
24 challenge. It's hard. And you have to be in their
25 shoes to understand that here's somebody that's

1 coming and driving trucks through your property for
2 the next X number of weeks; how do you want that
3 handled and to work that out. So I think that that
4 will be a particular challenge.

5 I think that -- other legal problems?
6 That there's always the unexpected. I think if you
7 learn anything over the years it's that something
8 unexpected will happen. Whether it's a lot of rain,
9 whether we have -- there's some sites out west, the
10 contractor went belly up. You have odd things
11 happen, things you may not have ever thought of. And
12 I think the hardest thing to deal with is what you
13 haven't planned for. A lot of planning, but you
14 always get thrown a curve. So I think that will end
15 up being the hardest thing.

16 MS. PASTOR: Anyone else?

17 AUDIENCE MEMBER: I think -- in this
18 consent decree, do you have a percentage of what
19 clean is going to be in the upper river? Is it 70,
20 80, 90?

21 MR. NAGLE: That was laid out in the
22 clean-up plan.

23 AUDIENCE MEMBER: But is it in here? I
24 didn't see it in here. What number?

25 MR. NAGLE: There's two goals: 88 percent

1 of the mass of PCBs and a surface-weighted
2 concentration of half a part per million in the
3 sediment patches. What that means is they will go
4 out and inventory each of the sediment patches and
5 find them all. Based on that, we figure out how much
6 there is both in terms of how much there is and how
7 we set the 88 percent. Clean-up goal is that
8 inventory fresh knowledge, what's out there right
9 now.

10 The second prong is then each of the
11 collective patches when we are done should reach a
12 half part per million at the surface so that what the
13 fish and the little critters are seeing is down to
14 that half part per million in the patches. That's
15 our -- that's in the clean-up decision. And that --
16 I think it's in there. I can look. I went through
17 it real fast.

18 AUDIENCE MEMBER: Cary is here tonight, and
19 I want to thank him and Tecumseh Company for sticking
20 with us and for doing the right thing, put it that
21 way. They did a fantastic job, and I just want to
22 thank them in front of everybody. It's a great job.

23 MS. PASTOR: Let's move into the comments
24 portion of the meeting. I will explain how that goes
25 one more time, now that we have asked and answered

1 questions as best as we could.

2 This is the time where we ask if you
3 have any particular comments, opinions, thoughts in a
4 statement form on this particular consent decree, the
5 legal document, this would be the time to do that.

6 And this would go into the official
7 record. So the court reporter is paying
8 exceptionally close attention to the details of your
9 name and organization that you're affiliated with if
10 that is the case and will listen to the comments.

11 And then we take them back and Rick
12 and the Department of Justice together will respond
13 to those comments in a separate document. We don't
14 respond to those verbally tonight. So you can read
15 them into the record. You can speak them however you
16 like to do that, but now would be the time to do
17 that. And who would like to go first? Stand up,
18 please. And if you would, give your name to the
19 court reporter. Spell your last name and your
20 organization, please.

21 MS. FEYERHERM: Jennifer Feyerherm and
22 the -- F-E-Y-E-R-H-E-R-M. And I'm with the Sierra
23 Club Great Lakes Program. I work with the Eco-Region
24 Program within the broader national organization of
25 the Sierra Club, which is the largest grassroots

1 organization in the nation. In the state of
2 Wisconsin we represent 12,000 members and thousands
3 more across the Great Lakes basin and we have a
4 commitment not to leave the toxic-like legacy of --

5 (Interruption by the reporter.)

6 MS. FEYERHERM: -- for our kids, we have a
7 commitment to the -- not to leave the toxic legacy of
8 PCBs for our children to deal with.

9 The Sheboygan River here is important
10 on two levels: One is to the local folks that live
11 here around the river and the other is to the folks
12 in the Great Lakes basin and even nationally.
13 Because the Great Lakes are a treasure, and the
14 Sheboygan River is a source of PCBs to Lake Michigan
15 and to the Great Lakes. So what goes on here not
16 only affects the folks that live around here but
17 affects folks from a much broader regional
18 standpoint.

19 I want to preface my comments here with the
20 comment that we -- these comments are not intended to
21 stall clean-up in any way. It is crucial we get the
22 clean-up going as soon as possible. Because the
23 longer on all of these clean-ups we wait, the harder
24 to get the chemicals, the longer we are exposed, the
25 longer the chemicals are exposed to the ecosystem.

1 We want the best possible clean-up we can have for
2 the river.

3 In terms of this consent decree, we have
4 three main problems with it: The first is this
5 provision that allows the responsible party to
6 petition to change the clean-up level that Rick
7 mentioned earlier. And the second is the lack of
8 public involvement that goes along with that, and
9 I'll explain that; and the lack of state involvement
10 in this consent decree.

11 First of all with this I'm going to call it
12 the petition provision just to call it something.
13 But what in the consent decree it does is allow the
14 responsible party, the person that put the PCBs there
15 in the first place, to go to EPA with information and
16 petition them to change the clean-up level.

17 Rick noted that this is something that is
18 allowed in federal law. But what's interesting is
19 under the laws that he cited and the laws that go
20 around sediment clean-ups, anyone can petition EPA to
21 change consent decrees or change the record of
22 decision at any time given new information. Anyone
23 can do that.

24 That's already laid out. It's never been
25 laid out this explicitly in a consent decree before.

1 Interestingly enough, in this consent decree it
2 specifically says the responsible party can go -- and
3 makes no reference to the public and makes no
4 reference to anybody else. I'll expand upon that
5 later. But that's what's different about putting it
6 in here.

7 What this does is two things: First of all
8 makes the clean-up standard kind of questionable and
9 puts room in there. And second of all, it sets a
10 really bad precedent, an ominous precedent for other
11 clean-ups around the Great Lakes. The clean-up
12 standard is the agency's version of how clean is
13 clean? What is going to protect human health and the
14 environment? They have spent many, many years
15 researching this, looking at what would be the best
16 option to clean up the river and how we can best
17 protect human health and the environment.

18 They put in all of this research, and a
19 provision like this in the consent decree allows one
20 entity at this point to come in, provide some
21 information, make more work for them to reevaluate
22 what years and years of research have already
23 determined, and it calls that clean-up level into
24 question.

25 We need a solid, unmoving line in the sand;

1 both the agency and the public do so we can evaluate
2 the clean-up. The agencies need to know how clean
3 "clean" is so they can look at what --

4 (Interruption by the reporter.)

5 MS. FEYERHERM: -- determine how clean
6 "clean" is. And we as the public need to know what
7 the clean-up standard is so that we know the
8 responsible party has met it.

9 The second thing that this provision does
10 is set a bad precedent for other clean-ups. It --
11 the two problems that I just explained is it opens up
12 all the other clean-ups around the Great Lakes basin
13 to those problems. It allows responsible parties to
14 start to expect that they can go in to change the
15 clean-up level and their motivations are different
16 than those of the public, generally speaking.

17 The other thing I wanted to talk about was
18 the lack of public participation here as well. As I
19 said, what's different about this clause is it
20 specifically names that responsible party as being
21 able to go and provide this extra information and ask
22 to change the clean-up level. Makes no reference to
23 public participation at that point whatsoever.

24 The Superfund process has public
25 participation built into it at every step of the way.

1 Folks that live around the river, the folks that live
2 in the basin need to have a large say in how the
3 clean-up works so it can adequately serve the public.

4 And then finally, we are concerned about
5 the lack of state involvement in this clean-up -- in
6 this consent decree. Excuse me. A week ago today we
7 saw one of the biggest announcements on the Fox River
8 talking about the record of decision there. We saw
9 Governor Doyle. We saw the secretary of the DNR
10 there talking Fox River clean-up. We are not seeing
11 the DNR even a signatory to this consent decree. And
12 you wonder how Wisconsin residents, how adequately
13 we're represented and the local perspective as well,
14 brought into this, if the state is not party to. We
15 really urge the agencies to get together and make
16 sure we have a comprehensive, solid clean-up that you
17 know all the parties consent to.

18 MS. PASTOR: Someone else like to make a
19 comment?

20 MS. MUSIKER: Debbie Musiker. I'm the
21 assistant director for the Lake Michigan Federation.
22 The Lake Michigan Federation has served as a
23 technical assistance grant advisor for -- on the
24 Sheboygan River and harbor clean-up for about a
25 decade now. And in that role we are here to help the

1 public understand the decisions and actions being
2 taken at the site and hopefully analyze the pros and
3 cons of those decisions.

4 We at the Lake Michigan Federation are
5 an environmental advocacy organization working to
6 restore fish and wildlife habitat, conserve land and
7 water and eliminate toxins from the largest watershed
8 within the United States.

9 Today I'm speaking as an advocate.
10 I'm here to represent the Lake Michigan Federation as
11 an advocate. But if anyone has questions, I'm also
12 here to play another role as a technical assistance
13 grant advisor.

14 To break things up a little bit,
15 because I've spoken with Jennifer, we have similar
16 thoughts about the document. I want to start with
17 some of my process comments and then I'll move back
18 to the substantive comments.

19 I want to just note I did submit
20 written comments. I was one of the three I guess
21 entities that submitted written comments. But I was
22 unhappy with some parts of that comment process in
23 the sense that although EPA did put the document on
24 the web site, it didn't include the stated work and I
25 think -- I think even after I notified EPA that that

1 wasn't on the web site, it was supposed to be in the
2 appendix, it wasn't added. The comment period was
3 extended and that wasn't on EPA's web site.

4 And I think that this is not by any
5 malice. I think having the Department of Justice
6 involved in implementing this as a partner with EPA
7 leads to some communication problems where one is it
8 might be on the Department of Justice web site but
9 the community might be looking at the EPA web site.

10 And I just want to note that for the
11 record that there was some problems that way that
12 were frustrating and that I worried that people might
13 not have heard about things that are important so you
14 would have an opportunity to comment. So I'm glad
15 that the public meeting was called and that people
16 were given this chance to talk about it.

17 But one thing that has bothered me
18 tonight both as advocate and as the technical
19 assistance grant advisor, I'm TAG advisor, is
20 throughout the process I keep hearing, are your
21 comments legal?

22 This is a public meeting. Most of the
23 people aren't lawyers and they will have legal
24 comments. Even though this is a public meeting about
25 the consent decree, people should feel free to ask

1 any questions they have. And if they are not
2 relating to the subject matter of the document --
3 because most of you -- many of you don't have the
4 legal background to ask a legal question -- I just
5 want to -- I felt where we -- that people were being
6 stifled by these reminders and may not have gotten
7 their questions answered.

8 So I wanted to note that. And maybe
9 that will spark someone with a question to come
10 forward at some point during the process. Obviously
11 if it's out of the scope of the document I don't
12 expect people to respond and can direct someone to
13 the person who might be able to respond to the
14 question or indicate.

15 But I think it should be clear that
16 people can ask any question relating to what this
17 department document did, because a lot of people
18 don't know what the consent decree is. So I think
19 people are entitled to ask those questions.

20 Those are my process concerns. They
21 are -- I wanted to make sure for the record so it
22 moves the process and we go forward.

23 In terms of substantive comments, I
24 have a few general points to make; then I'll make
25 some final remarks. Generally it's time to move

1 forward. I don't know how many of you locally read
2 the Sheboygan Press today but there was a Joe
3 Heller's cartoon about the Fox River where he waits,
4 you know, until you see all the PCBs have gone from
5 the Fox to the bay and then finally say it's time to
6 clean up. And I think that is -- really speaks to
7 all these clean-ups. There is this sense, I'm glad
8 we made it to this point, this is a milestone to get
9 to the consent decree. And now I urge EPA to go
10 forward expeditiously with the clean-up and I hope
11 that's what we see as we move forward.

12 I also want to see that the record of
13 decision set forth a clean-up standard, the minimum
14 level to protect human and ecological health. And
15 when I talk about a clean-up level standard, I'm
16 talking about the .5 parts per million concentration
17 for the PCBs. And I think that's the minimum
18 standard that's going to be able to protect human
19 ecological health. And that must be maintained as
20 the clean-up goes forward.

21 That's an important step for the
22 Sheboygan River and the Lake Michigan basin, and I
23 also just want to say as Jennifer said, that this
24 Sheboygan community having been -- the Lake Michigan
25 Federation has been involved in it, the subject for

1 over a decade. And we know how badly the Sheboygan
2 community needs this clean-up, as does the whole Lake
3 Michigan basin. This affects more than your
4 community with this toxic loading into the lake.
5 Everybody needs to see it cleaned up.

6 Specifically I want to address and ask
7 EPA to reconsider the inclusion of the language of
8 what I'll also call the petition provision, Paragraph
9 4, Section 13 of the consent decree. This provision
10 allows Tecumseh to petition or to request to have the
11 clean-up standard changed if Tecumseh shows that it's
12 technically impracticable to meet it. And it is --
13 Rick said this is the first time that this type of
14 provision has been included in a consent decree. The
15 first time in the nation we are seeing something like
16 that. And I want to say, this is bad policy. It
17 undermines the record of decision process.

18 That process is an extensive process
19 with technical analysis, a comment period. And that
20 period is all designed to come up with what is the
21 appropriate standard. And the message I think it
22 sends to have such a provision in the decree is don't
23 worry about a --

24 (Interruption by the reporter.)

25 MS. MUSIKER: Basically it sends the

1 message that you really don't need to meet the
2 standard that we came up with after this long
3 extensive process; throw up your hands, say, I can't
4 meet it and we will see what we ask done and we're
5 seeing what we can do. It won't be as public a
6 process. So I actually think that it could -- maybe
7 the agency document, that it could over time become
8 an incentive for PRPs to kind of -- I don't want to
9 say hide the ball -- but not fully participate in the
10 ROD process and try to get to the right result.
11 Because they would have incentive to wait til later
12 and say that they can't meet the standard so that we
13 are not going to get -- we are not going to get a
14 process where a PRP says I have to meet the standard,
15 what can I do to meet the standard. I'm going to be
16 creative. I want to make sure we meet the .5 percent
17 parts per million. I'll use every resource I have to
18 come up with a way to get this clean-up to the level
19 necessary for the public.

20 And that's what I want to focus on. And
21 the reason that this matters is that the standard is
22 important. Contaminated sediments act as a reservoir
23 from which the PCBs are entering the food chain. We
24 are at the top, people at the top. People are at the
25 top --

1 (Interruption by the reporter.)

2 MS. MUSIKER: -- through a process known as
3 biomagnification the concentrations of the PCBs
4 increase as we go up through the food chain, so as we
5 are eating fish, our concentration -- the fish that
6 are eating off the bottom we're getting a higher
7 concentration and as everyone probably is aware of
8 having lived here and read about this for a long time
9 that threatens the human immune system, the exposure
10 to the PCBs, it threatens intellectual capacity.
11 This is a real harm to humans and obviously to the
12 fish and to the ecosystem that needs to be addressed.
13 And that's why I feel so strongly that the standard
14 needs to be kept in place, because that standard was
15 designed to protect humans and fish.

16 I'm also concerned about the provision
17 because it includes no opportunity for public
18 comment. It says after notice and opportunity for
19 the state to comment, then the EPA will reach a
20 decision.

21 It actually does -- this petition provision
22 does not say after notice an opportunity for the
23 public to comment. This may be an oversight. I know
24 that EPA throughout the Superfund process tries to
25 include the public, but I'm concerned since this is a

1 special provision that's added and it doesn't say
2 explicitly that the public will have an opportunity
3 to comment, that concerns me and should be addressed.

4 And another similar, very detailed point is
5 that it doesn't include a time frame for which
6 Tecumseh must work at the site before it throws up
7 its hands and files this petition. It doesn't say
8 after one work season, two work seasons then Tecumseh
9 can come forward and tell us it's not working, we
10 can't get to .5 parts per million, we have given it a
11 good try.

12 It says Tecumseh can come forward. So that
13 it means that Tecumseh can come forward at any time.
14 Now Tecumseh could say we are -- there's no way. We
15 have done a little bit of work to prepare the scope
16 of work and we know we are not going to be able to
17 meet this. And then all that work that went into
18 doing the ROD is lost from official efforts.

19 There should be a time frame. Any
20 provision that I've found -- as Rick said, there's no
21 provision just like this -- but anything that was
22 just close in terms of allowing a party to seek a
23 change in the ROD because of technical and
24 practicability includes a time frame. It says after
25 a certain period of time.

1 But at the minimum I think that EPA should
2 change that provision to allow for public comment and
3 to explicitly state the time frames if it, you know,
4 is absolutely necessary to keep that provision --
5 which I'm not convinced it is.

6 As I said, I think the people of Sheboygan
7 are ready to see this site cleaned up. I hope the
8 consent decree marks a period of expeditious clean-up
9 and I appreciate the opportunity to speak here and I
10 look forward to the next steps.

11 MS. PASTOR: Okay. Anyone else have a
12 comment?

13
14 MR. WENTLAND: I'm Tom Wentland, project
15 manager for the Sheboygan River with the Department
16 of Natural Resources. And I'd just like to make a
17 couple quick comments. Speaking for the Southeast
18 Region, we have been very pleased with the
19 cooperation we have gotten from EPA regarding the
20 involvement through the years. I've been involved
21 since 1989 with this project, and we have had a lot
22 of review time and just great involvement, so we
23 haven't been eliminated from the process at all.

24 Another point that was brought up
25 tonight is that we didn't get involved with the

1 consent decree. We chose not to be involved with
2 the -- or to not sign the consent decree so we could
3 leave our options open for future claims against
4 natural resource damages for the rest of the river
5 project.

6 The third point I wanted to address
7 was that the Fox River is a little -- the Fox River
8 is a state project; that's I think why it got all the
9 press that it did as compared to the Sheboygan River.
10 This is a federal lead project, so we are involved
11 but we're just not in the forefront as we are in the
12 Fox. That's it.

13 MS. PASTOR: Thanks. Somebody else like to
14 make a comment? Yes, sir.

15 MR. THILL: My name is Alan Thill from
16 Thill Marine, T-H-I-L-L. One thing -- I don't want
17 anybody to think that we are against what you people
18 are doing. I'm all for it. But you got to realize
19 for nine years we have run boats down the river
20 starting at Tecumseh to Sheboygan. And you're
21 talking about a 4-year project and 4 years of no
22 business. Who is going to subsidize that and take
23 care of us? That's my comment.

24 MS. PASTOR: Thanks. Someone else have a
25 comment?

1 MS. VERHEY: Would it be reasonable for me
2 to add what I had said so it's in the official
3 comments? I'd like to see that really looked at as a
4 possibility of using this as clean-up.

5 MS. PASTOR: You want to state it again now
6 so she will have it straight for the record. Your
7 name and your -- if you have a title or with an
8 organization. And try to give her a break, talk
9 slower.

10 MS. VERHEY: I'm Nancy Verhey, V-E-R-H-E-Y.
11 I'm really a member of Sierra Club and a concerned
12 citizen. I've spent hours reading the EPA's web
13 site. And after looking at the -- probably ten sites
14 on zebra and quagga mussels on the internet, I have
15 come to the conclusion that we could solve two
16 problems.

17 One problem is the problem resulting
18 from the quagga mussels and the zebra mussels in the
19 waterways. There's as many as 12 inches -- a
20 covering of 12 inches of zebra mussels in some
21 waterways. A female will raise 3,000 eggs. And
22 those zebra mussels have their life-span, which I
23 think is about a summer or three months or so.
24 During that period of time they siphon the water
25 through their system and clean the water. They

1 become part of the food chain. The toxins that they
2 are cleaning through the water -- they are bottom
3 dwellers -- and the toxins are carried up through, up
4 through the food chain and evident in the fish and
5 fowl we are eating.

6 We have an awful -- this is a big
7 problem in Lake Erie, a problem in Canada down to
8 Florida and over to Minneapolis, basically the entire
9 northeast and south section of the country.

10 The toxins there are carried into the
11 food chain are right now killing water fowl. We have
12 not only the PCBs but a lot of estrogen in our water
13 system that's changing the breeding habits. Male
14 fish are carrying the vitulin (phonetic), the protein
15 you would find in a female pregnant fish. There's so
16 much the male fish doesn't really know he's a male
17 and the female isn't aware because of the great
18 amounts of hormones in their systems.

19 So if we could find a system where we
20 use the quagga mussels and zebra mussels to clean the
21 water and then took them out of the water, it might
22 save something like Thill Marine. If you had set up
23 some sort of a system where you could lay a net, a
24 wooden net on the bed and let the quagga mussels
25 attach to it -- on the internet they had a shopping

1 cart that had 70,000 zebra mussels attached, a soda
2 can had 3 to 6 inches of mussels on it pulled off a
3 river bed.

4 So if you laid something like this on
5 the river bed and pulled it up every 3 months, you'd
6 get the zebra mussels out of the water, each female
7 laying 30,000 eggs. And you would pull the toxins
8 out with that, because the toxins then don't have a
9 chance to make it up the food chain.

10 I know we have to worry about the
11 quagga mussels in the waterways anyway because these
12 are causing more bacteria growth. The light comes
13 down to the bottom and the seaweed grows, which is
14 what's happening right now in the Sheboygan beaches.
15 The seaweed grows because the water is clear. We are
16 seeing the beautiful blue Lake Michigan thanks to the
17 zebra mussels. But when the seaweed decomposes --

18 (Interruption by the reporter).

19 MS. VERHEY: -- decomposes, we have high
20 bacteria levels in our water. Beaches are closing
21 because of these high bacteria levels. And one of
22 the causes is the decomposition of the seaweed, which
23 is a direct effect of the zebra mussels in the water.

24 So perhaps we could get the EPA to use
25 the left hand and right hand together and solve both

1 the problems at once. There will have to be a
2 long-term solution for the zebra mussels. They are
3 in all of the European waterways -- they have been
4 for 200 years -- now in our waterways. There really
5 isn't an easy way to get them out. You can't flood
6 the water with something that's going to kill the
7 zebra mussels.

8 But we could use that zebra mussel to
9 solve our clean-up problems. They're doing it now
10 only they are staying in the water system working
11 their way up the food chain.

12 So I encourage anyone who has the
13 opportunity to look at this to maybe take a little
14 different look at it, other than pulling the river
15 bed up and moving it somewhere else, possibly. I
16 don't know if PCBs in zebra mussels would be easier
17 to clean up than 50,000 cubic yards of dirt. But I
18 could encourage the EPA and the people involved to
19 look at it. Thank you.

20 MS. PASTOR: Anyone else have a comment for
21 the record? Going once, going twice --

22 MR. NAGLE: Larry, what were you waiting
23 for?

24 MR. FREITAG: I'm just listening. Larry
25 Freitag, F-R-E-I-T-A-G. I'm a member of the Great

1 Lakes Area Sport Fishermen and a member of almost any
2 other club you want to know. I've -- basically I've
3 been on this for all too many years. And I've met a
4 lot of people and made a lot of friends, and all of
5 these people seem to have the same idea. They want
6 to get the Sheboygan River cleaned up.

7 I was very naive when I first got
8 started. I figured two weeks, you should have it
9 taken care of, no problem. We had 28 people to start
10 with and no problem at all. We looked at all the
11 information, went out to the County Conservation
12 Associates and they agreed with me also, it could be
13 done in less than two weeks.

14 Naive? Yes, I admit it. I started
15 working with the DNR. Anybody says the DNR didn't
16 have something to do with this whole project, they
17 are not always in the forefront but they are there
18 working with us as far as testing fish, testing the
19 river. They have been here all the time. And I kind
20 of resent that accusation that they didn't have
21 anything to do with the clean-up.

22 There's been a lot of people working
23 on it and I thought we were getting someplace, and I
24 guess I was naive again. This was 15 years ago. And
25 all of a sudden things started happening. I thought

1 we had a ROD that was already written and taken care
2 of and more than eleven years after that, all of a
3 sudden things were starting to slow down again.

4 And then all of a sudden we went
5 through two leaders and then all of a sudden he got
6 promoted and then we went to another guy that doesn't
7 even know where Sheboygan is. So, like I say,
8 experience? I've had a lot of it, an awful lot of
9 it.

10 But all I have to say, as far as I'm
11 concerned it took longer than what I figured. But I
12 think it's still taking -- it took too long. And I
13 would hope that this gets resolved in a hurry.
14 Because I'm not going to live that much longer and I
15 want to see my grandchildren, they can start using
16 the Sheboygan River. I started out fishing on the
17 Sheboygan River and I learned how to fish on the
18 Sheboygan River. And I think it should be cleaned up
19 to the point that we can get back where we can start
20 eating game fish and we can start eating game.

21 I know we are never going to be able
22 to shoot in Sheboygan again but in areas nearby. And
23 we can eat those game fish without having to worry we
24 are going to die or light up at night. Thank you
25 very much.

1 MS. PASTOR: Thanks. One more in front.

2 MS. O'MALLEY: Sharon O'Malley,
3 O-M-A-L-L-E-Y. I represent myself. I read that this
4 has been going on since 1987, we were warned not to
5 fish and eat the fish and to watch out for the water
6 fowl in the area and stuff, it's toxic to us.

7 I'm not sure of all the ramifications
8 but I know that being on the top of the food chain if
9 I ate anything that comes from the lower end of the
10 food chain that's already polluted, my chance of
11 getting cancer or birth defects and all this stuff is
12 great. I know they've shown so many of the birds
13 have reproductive problems.

14 And I would urge the EPA to stand fast
15 on your level of what clean is. I don't care what
16 Tecumseh may say in the future, stand fast, don't let
17 them get back on it. Thank you.

18 MS. PASTOR: Did I see some --

19 MS. FEYERHERM: May I clarify? I did not
20 mean -- I want to take the opportunity -- I did not
21 mean in any way to say the DNR has not been working
22 on this; I know that is far from the case. And I do
23 know they have been involved in the process.

24 My point is merely that this is a
25 legal -- the record of decision and this consent

1 decree are legal documents. And in other areas -- it
2 represents -- it seems to me all of the claims we
3 have got on the river, if you can get both the
4 federal government who represents us and the state
5 government who represents us working together and on
6 the same legal documents.

7 I was not trying to imply the DNR has
8 not been involved at all; I know they have done a lot
9 of good work. And I've gotten a lot of good
10 information from DNR staff.

11 So I just wanted to clarify that.

12 MS. PASTOR: All righty. Any more
13 comments? We have the room for 25 more minutes
14 but -- probably 20 minutes, gives us 5 minutes to get
15 out. Going once, going twice --

16 MR. FREITAG: Does that mean questions on
17 other parts of the river?

18 MS. PASTOR: I will close the comment
19 portion of the meeting. And these comments that were
20 made will be responded to in a little responsiveness
21 package or summary that would probably be available,
22 what? On our web site?

23 MR. NAGLE: Yes. That's up to you and the
24 folks in public affairs.

25 MS. PASTOR: You give it to me; I'll get it

1 on the web site. When do you think that would be?

2 MR. NAGLE: I'm talking about that with the
3 Department of Justice. But I think the objective is
4 to get the responses pulled together as soon as we
5 can so that we can get the process -- keep the
6 process moving as quickly as possible and not have
7 work somehow stop because we have haven't met our
8 internal legal deadline.

9 We will see how it -- if Leslie holds
10 my feet to the fire and makes me do it before the end
11 of the summer. But I would say you should probably
12 look for it the end of August.

13 MS. PASTOR: You know, if you get it to me
14 I will get it on the web site. I'm very good friends
15 with the web master and I put all kinds of stuff up
16 there. Give it to me, it goes on W-W-W dot E-P-A dot
17 G-O-V slash region 5, the number, slash, sites,
18 S-I-T-E-S. And from there there is some clicking
19 directions that are pretty self-explanatory where you
20 click on Wisconsin and then in an alphabetical order
21 and go down to S and lots of things about Sheboygan.
22 So do look that up.

23 If you didn't get that, if you need
24 more information, you can call Rick or myself. Our
25 information is on the bottom of the agenda and we

1 have email. And when we are around, we respond
2 pretty fast, but we travel for work like we are
3 tonight. So when we are not there, we are here or
4 somewhere else, other projects. But we will get back
5 to you as soon as we can.

6 I believe our documents including the
7 consent decree are still here in the library. I
8 didn't get a chance to check, but they have done a
9 very good job of keeping our information straight.
10 So we house all of our documents here and in the City
11 Hall. And they are reference material, so go and
12 look up one of our documents. You can't check them
13 out, but flip through them here and make xerox copies
14 here.

15 I can't think of anything else, can
16 you, Rick? So we'll be -- we will stay around for
17 another 10 or 15 minutes and they will kick us out,
18 because they have done it in the past.

19 MR. NAGLE: We will allow the court
20 reporter to stop and close the official record, and
21 then we will stay around and answer questions.
22 Thanks for coming. If you want to ask us a few
23 questions, call the --

24 AUDIENCE MEMBER: You say .5 per million
25 and Tecumseh says that's too restrictive. Is there

1 somewhere on the web site or where we will be able to
2 keep track of that to see if they were in fact trying
3 to get that lowered to -- that standard? If we can't
4 accept, we are -- then as citizens we could start a
5 class action lawsuit against Tecumseh and say oh, no,
6 you will go this way?

7 MR. NAGLE: You're anticipating my
8 response. At a certain level I -- I disagree with
9 Jennifer. There are -- we change the clean-up
10 standard. It says not only in the consent decree but
11 in our regulations we have to do a ROD amendment.
12 And according to the NCP regulations we need a full
13 public comment.

14 AUDIENCE MEMBER: For a -- for a person who
15 doesn't read the Sheboygan Press normally --

16 (Interruption by the reporter.)

17 MS. PASTOR: If you signed in tonight,
18 you're on the mailing list and you will get a free
19 lifetime subscription to anything put out by
20 Sheboygan and catch up on what you missed on the web
21 site. To go back further than the internet, you can
22 call me and I could send you some really old stuff in
23 hard copy.

24 AUDIENCE MEMBER: And your name is on some
25 of the stuff you printed out today?

1 MS. PASTOR: I've been doing this since '87
2 and Rick since '89; our names go way back. We will
3 be happy to catch you up. If you want, we will end
4 the meeting and hang around for no more than like 10
5 minutes and give the court reporter a chance to close
6 up shop. And we thank you for coming.

7 (Meeting concluded at 8:35 p.m.)
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STATE OF WISCONSIN)
) SS:
MILWAUKEE COUNTY)

I, Margaret A. Matousek, RPR and
Notary Public in and for the State of Wisconsin, do
hereby certify that the preceding meeting was
recorded by me and reduced to writing under my
personal direction.

I further certify that said deposition was held at Mead Public Library, 710 8th Street, Rocca Meeting Room, Sheboygan, Wisconsin, on the 4th day of August, 2003, commencing at 7:00 p.m.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

In witness whereof, I have hereunto
set my hand and affixed my seal of office on this
20th day of August, 2003.

Margaret A. Matousek, RPR
Notary Public

My commission expires January 28th, 2007.

